

NSR Reform Issue Paper: Pollution Control Project Exclusion

I. Background

In the new federal rules, U.S. EPA extended the current pollution control project (PCP) exclusion for existing electric utility steam generating units to existing units that are not electric utility steam generating units by codifying and slightly revising the concepts from the July 1, 1994 guidance, “Pollution Control Projects and New Source Review (NSR) Applicability”. U.S. EPA designated a list of projects that will be considered presumptively environmentally beneficial. If a source constructs a project on that list that would otherwise be subject to major new source review (i.e., due to a significant increase in collateral emissions), a source may be excluded from the major new source review requirements by providing notice to the permitting authority prior to construction. If a source plans to construct a PCP that is not on that list, the source must submit an application to the permitting authority prior to construction. The permitting authority will review the application and determine if the project is environmentally beneficial. The permitting authority’s determination will be included in a SIP-approved or Title V permit and subject to review by the U.S. EPA and the public prior to issuance. In either case, a PCP must meet specified criteria to ensure that collateral emissions are minimized and that the construction of a PCP will not cause or contribute to a violation of any national ambient air quality standard (NAAQS) or PSD increment or adversely impact an air quality related value for a Federal Class I area.

IDEM understands the benefits of an exclusion for PCPs and currently implements PCP exclusions in the current state major new source review rules for electric utility steam generating units at 326 IAC 2-2-1(x)(2)(H) and 326 IAC 2-3-1(s)(2)(H), and units that are not electric utility steam generating units at 326 IAC 2-2.5 and 326 IAC 2-3-1(s)(2)(H). The major differences between the current state exclusions and the new federal exclusions are:

- A significant source modification approval is required prior to using the PCP exclusion to construct a PCP in all cases in the state rules.
- The list of projects presumed to be environmentally beneficial is not as extensive or explicit in the state rules.
- Emission offsets are required for PCPs that result in a collateral increase of a pollutant in an area that is designated nonattainment for that pollutant.
- The state exclusions for units that are not electric utility steam generating units are not approved portions of the SIP, and rely on a July 1, 1994 U.S. EPA guidance memo rather than a federal rule.
- The federal rules allow the use of the Title V permit revision process to implement the PCP exclusion.

II. Issues

The following are issues or questions that IDEM or stakeholders have raised for consideration:

1. Anything different than the federal rules might be difficult to get approved into the SIP by US EPA;

2. Notification only process for listed projects versus significant lead time for obtaining pre-approval of a PCP;
3. Possibility of revisions to 326 IAC 2-1.1-7 to include a fee for the review of notifications;
4. Air quality violation concerns if analysis is not required to prove that a NAAQS and/or PSD increment are not violated or if collateral emissions increases of a nonattainment pollutant are not offset;
5. Verification that the PCP achieves the claimed reductions such that it is environmentally beneficial and that collateral emissions are minimized;
6. Restrictions on emission reduction credit generation;
7. Can the current exclusions in the existing state rules be used to implement the new federal exclusion procedures now?

III. Analysis

1. Anything different than the federal rules might be difficult to get approved into the SIP by US EPA

The state, according to 67 FR 80241, must develop or adopt rules in accordance with U.S. EPA's new rules by January 2, 2006. According to the CAA section 116 (42 USC 7416) Indiana may adopt or enforce, "(1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution [but] such state... may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." At this time, it is not clear what deviations from the federal language will be acceptable to U.S. EPA. Therefore, changes may or may not be approvable by U.S. EPA.

The new federal rules are more specific in the procedural requirements and criteria for the pollution control project exclusion compared to the previous federal rule and the current state rules. Adopting the specific criteria in the state rules would provide more certainty and make the exclusion process easier to understand, lessening instances of case-by-case interpretation of the exclusion and standardizing implementation of the exclusion. The federal exclusion is also less restrictive because it no longer requires the primary purpose of a project to be pollution control and it removes the emphasis on increase in utilization if the project is beneficial, encouraging more pollution prevention projects.

EPA has stated that their policy is to promote pollution control and prevention projects whenever possible. IDEM shares that goal as well. Adopting the exclusion in the state rules as is could make it easier than the current state rules for sources to plan and implement PCPs, resulting in additional environmental benefit.

2. Notification only process for listed projects versus significant lead-time for obtaining pre-approval of a PCP

Adopting the listed PCP procedures without changes could result in increased compliance risk to sources and burden to the state since some projects would not require pre-approval. It could create compliance and enforcement situations if: the PCP was constructed but the PCP exclusion was not properly applied by a source; or other circumstances would cause IDEM to determine that the project is not environmentally beneficial after the fact; or the PCP could cause or contribute to a violation of the NAAQS or PSD increment. Added verification by IDEM through pre-approval could increase the certainty of the environmental benefit of the project and reduce the likelihood that a NAAQS or PSD increment would be violated. In addition, it could provide an opportunity for public notice and comment.

Adopting the notification only process for listed PCPs without changes has benefits as well. The list of PCPs and requirements are fairly specific, and the listed projects are limited. IDEM itself has experience with specific types of PCPs, and some are straight-forward in most circumstances. US EPA believes that the notification process minimizes procedural delays associated with getting an approval while ensuring appropriate environmental protection. Requiring pre-approval of listed projects may upset the balance by increasing procedural delays, possibly unnecessarily in most instances. A beneficial project forced to go through review prior to construction may be abandoned if it is under a tight implementation time frame (i.e., plant shutdown period). Significant review may not be necessary in most straightforward cases.

3. Possibility of revisions to 326 IAC 2-1.1-7 to include a fee for the review of notifications

Currently, the PCP exclusions in the state rules require a significant source modification application, including the associated fees for a significant source modification. IDEM does not have any specific fees to support the review associated with notifications versus permit applications. Depending on the number of projects undertaken, this could cause a significant burden on IDEM. Therefore, it may be appropriate to add fees in 326 IAC 2-1.1-7 to address specific resource needs for reviewing pollution control project exclusion notifications.

4. Air quality violation concerns if analysis is not required to prove that a NAAQS or PSD increment are not violated or if collateral emissions increases of a nonattainment pollutant are not offset

The new federal rules require that, in the notice or application for the PCP exclusion, the owner demonstrate that the PCP will not have an adverse air quality impact, except that an air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project. The new federal rules state in the preamble that in performing an air quality analysis under the PCP provision, the procedures established for conducting an air quality analysis in conjunction with NSR permitting will be used. In addition the preamble states that the source and permitting authority must ensure that any significant emissions increase of a nonattainment pollutant is accounted for with acceptable offsets or SIP measures. None

of this is specifically stated in the final rule. This may be confusing to sources and the public during implementation because many might not read the original preamble associated with the federal rule. It might make the rule easier to implement and understand if this was expressly stated within the PCP exclusion provisions in the state rule.

The full air quality analysis is not specifically required by the federal rules. A demonstration that the PCP will not have an adverse air quality impact is required. Demonstrations short of a full air quality analysis may not satisfactorily demonstrate that a PCP will not have an adverse air quality impact. However, requiring a full air quality analysis could result in an unnecessary burden and delay for a PCP when the implementation of a PCP in most cases will not result in a violation of a NAAQS or PSD increment. Changes to the federal provisions when writing the state rules may not be necessary because the permitting authority has the authority to ask for more information, including a modeling analysis, in cases where there is reason to believe a violation could result.

5. Verification that the PCP achieves the claimed reductions such that it is environmentally beneficial and that collateral emissions are minimized

No reporting is required to ensure that the PCP achieves the claimed reductions. Records must be kept on-site. These records aren't accessible to the public unless IDEM requests a copy for the public files; this may make it more difficult to verify that the PCP meets the operational requirements of the exclusion and achieves the claimed reductions such that it is environmentally beneficial.

However, reporting may be overly burdensome to sources, and unnecessary in some cases such as pollution prevention projects. Changes to the federal provisions may not be necessary because IDEM has the authority to request a copy of records if there are concerns with the operation of the PCP.

Title V permits should be revised to include the operational requirements associated with the use of the PCP exclusion. The requirements become new applicable requirements as defined by 326 IAC 2-7-1(6)(A). A minor or significant permit modification might be used to revise the permit. This would provide verification through enforceable permit conditions and annual compliance certifications.

6. Restrictions on emission reduction credit generation

Allowing PCPs to generate emission reduction credits for further reductions may be problematic for implementation. Problems may occur if a source documents an emissions reduction for an environmentally beneficial analysis, but realizes a higher reduction in practice and wants to claim additional credit for that reduction. Drawing the line on what level of reduction was needed for the project to be designated beneficial and what may be considered as excess may be difficult to determine. This may cause

reductions that would have been environmentally beneficial to be used to net out or offset another project, decreasing the environmental benefit of the PCP.

If the state rule provisions were changed to not allow additional reductions to count as emission reduction credits, fewer projects may be implemented, reducing the net benefit to air quality. Legitimate surplus emission reduction credits should be available for use and encouraged because they may result in additional emissions reductions or a net decrease in emissions when used.

7. Can the current exclusions in the existing state rules be used to implement the new federal exclusion procedures now?

Currently, the state rules require the owner to apply for a significant source modification to construct a pollution control project, and IDEM grants an exclusion on a case by case basis. Based on these existing rules, the notification process allowed under the new federal rules for listed PCPs will not be allowed prior to the revision of the state rules; however, IDEM may find that a project that is a listed project in the federal rules does not need a full explanation of why it is environmentally beneficial.